

BILL ANALYSIS

C.S.H.B. 2851
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Government Efficiency & Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

State agencies currently have broad discretion to adopt rules that are reasonably related to their statutory mandates and are required to review their rules periodically and to assess the continuing necessity for such rules. State law also provides the legislature and the public a means of providing input into, challenging, and changing, including overturning, agency rules. Parties interested in the issue of state agency rulemaking acknowledge the importance of agency staff expertise in the rulemaking process but nevertheless argue that the more fundamental determinations of legislative intent in the adoption of a rule should be guided by the legislature and not result from a challenge and, if necessary, an overturning of a rule by the legislature after a rule has been adopted.

During the recent interim, the Committee on Government Efficiency and Reform examined state agency rulemaking and found that agencies adopt rules that appear to be beyond the purview of the agency and the enabling legislation. C.S.H.B. 2851 seeks to address this issue by clarifying the purpose of state agency rulemaking.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2851 amends the Government Code to limit a state agency's authority to adopt rules to the adoption of rules that fulfill a purpose established by the constitutional or statutory law governing the state agency and that are within the state agency's authority to adopt.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2851 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 2001, Subchapter B, Government Code, is amended by adding Section 2001.020 to read as follows:
Sec. 2001.020. **REGARDING** ADOPTION

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 2001, Government Code, is amended by adding Section 2001.0205 to read as follows:
Sec. 2001.0205. ADOPTION OF RULES.

OF NEW RULES. (a) A state agency shall only adopt a rule that fulfills the purposes of the law governing the agency.

A state agency may adopt only rules that fulfill a purpose established by the constitutional or statutory law governing the state agency and that are within the state agency's authority to adopt.

SECTION 2. This Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.